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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner.*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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The core of petitioner's argument to this Court rests upon the uniformity purpose of Section 301 of the Labor-Management Relations Act, which precludes the applicability of 50 different limitations to suits under this uniquely national enactment. In answer to that central argument, respondent's brief merely recites previous rulings of this Court where (in the absence of such compelling uniformity considerations) local limitations have been adopted as the standard for suit under a federal statute. Respondent thus fails to answer petitioner's basic contention for this Court's preferment of uniformity over dissonance in the elaboration of Section 301. This short response is therefore limited

to the clarification of certain collateral points raised by respondent's brief.

1. Respondent first asserts (Brief, pp. 11-15) that this action is not within the jurisdiction conferred by Section 301 because it is a suit for vacation pay due individual employees and is thus based upon "substantive rights created by state law". Much is made of the fact that in the concluding paragraph of the petitioner's complaint there are cited the Indiana statutes permitting recovery of double unpaid wages. But, as we have indicated (Brief for Petitioner, p. 9, n. 1), neither did petitioner by that recitation characterize this Section 301 suit as one based upon state law, nor could it effectively have done so in view of *Smith* v. *Evening News Assn.*, 371 U.S. 195.

Equally unavailing is respondent's distinction of *Evening News* (Brief, pp. 13-14) as a case involving a suit by an individual employee whereas in this case brought by the union "there is no showing of an assignment, nor is there anything in the record indicating any legal claim or real interest on the part of the Petitioner." But this case is here on a motion to dismiss the complaint and there is no occasion at this stage for an evidentiary showing of the union's "legal claim or real interest." Nor is it credible to suggest, as respondent in essence urges, that Section 301 actions may be commenced only by individual employees and not by their union. Subsection (a) of Section 301 expressly authorizes "suits for violation of contracts between an employer and a labor organization representing employees . . .". Taken together with the "sue or be sued" language of subsection (b), it seems incontestable that unions do have standing to sue under Section 301 not only to redress direct union rights under the collective contract, but equally to secure the contractual rights of the employees which the union has won in collective bargaining.

2. For the first time in this litigation the company suggests (Brief, p. 14) that the union failed to invoke available grievance machinery under the contract, making it "doubtful" (Brief, p. 5) that the rule in *Republic Steel Corp* v. *Maddox,* 379 U.S. 650, has been met. This point not having been presented in the company's motion to dismiss, there is no record here to test whether the grievance machinery of the contract was available and was invoked prior to the institution of litigation in the Indiana courts on February 21, 1958 (see Brief for Petitioner, Appendix, p. 1). If the Court reinstates this action, as we urge, the pertinent facts in regard to the grievance procedure may be brought out if and when the company pleads the *Maddox* defense.

For the information of the Court, however, we can state that the contract grievance machinery was not in fact available for invocation by the union. The company finally ceased its Evansville production operations covered by the contract with the union on June 28, 1957. Its work force was thereupon disbanded and operating officials left the State. At a meeting on June 25, 1957, the company assured the union that it would grant the vacation pay due the employees and would issue checks in the following January, when, in its view, such payment was due. However, when a group of employees went to the premises on January 2, 1958, they were informed that the company was not in operation and no payment would be made. Thus, when the company made manifest its violation of the contract in January of 1958, it had ceased its operations for six months, and had actually transferred its assets from the State. The working relationship had terminated, there was no practicable means for invoking the grievance procedure, and the Indiana suit was filed in February of 1958.[1]

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[1] The complaint filed in the Indiana court asked for the appointment of a receiver. As set forth in the complaint (Brief for Petitioner, Appendix, p. 3), a receiver was required on the grounds that "defendant

3. Respondent also suggests (Brief, pp. 6, 17) that uniform limitations under Section 301 should not be prescribed by this Court because the present range of limitations variance in the 50 states provides "as much uniformity as can be expected in light of the fact that state courts now have concurrent jurisdiction over Section 301 actions . . .". But this hypothesis assumes the continuing applicability of local limitations to Section 301 suits when commenced in state courts even if this Court establishes, as we urge, uniform Section 301 limitations standards. This hypothesis is erroneous; uniform federal law requirements of Section 301 apply whether the suit be in a federal or in a state court. *Local 174 Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95; *Charles Dowd Box Co.* v. *Courteney*, 368 U.S. 502.

4. Respondent next suggests (Brief, pp. 20-23) that if uniform national limitations standards are to be fashioned for Section 301 suits, this Court should adopt the 6 month period under Section 10(b) of the Act for filing Labor Board charges. We agree that in suits under Section 303 of the statute resort to the 6 month limitation may be appropriate, since the monetary cause of action there recognized is premised upon the *same* substantive right as is safeguarded by Section 8(b)(4). But unlike Section 303, suits under Section 301 are *not* based upon rights secured in Section 8 of the Act. Tortious and discriminatory conduct—not con-

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corporation is in imminent danger of insolvency and has in fact discontinued many of its operations in this state; and that defendant has transferred many of its assets to the Mimosa Corporation in South Carolina and beyond the jurisdiction of the Indiana courts; that defendant's assets remaining in the jurisdiction of the Indiana courts are now advertised for sale; that all security for the protection of these plaintiffs' liens for wages is in danger of dissipation and distribution; that unless said remaining assets are impounded or otherwise protected from dissipation and distribution, the plaintiffs herein and all the members of the class represented by them will be prevented from achieving any practical satisfaction of their claims."

tract violation—is proscribed by Section 8. The difference between the predicates of a contract suit under Section 301 and of unfair labor practice proceedings is amply illuminated in this Court's *Evening News* decision. There is no more reason for subjecting contract suits under Section 301 to unfair labor practice time limitations than for the subjection of Section 301 suits to unfair labor practice preemption, which this Court emphatically rejected in *Evening News*.

5. Respondent objects (Brief pp. 24-27), on the ground that the contention was not made in the courts below, to the union's request for a tolling of limitations under the principle of *Burnett* v. *New York Central R.R.*, 380 U.S. 424. But petitioner was not required to anticipate this Court's 1965 ruling in *Burnett* (see Brief for Petitioner, p. 21, n. 7). In any event, the tolling argument would have had no practical impact below, since the Court of Appeals *rejected* the federal uniformity premise upon which we base our request for national limitations and tolling under Section 301. Consistent with our argument for uniform limitations under Section 301, we also urge (Brief for Petitioner, pp. 20-22) application here of the tolling principle of *Burnett*, fashioned by this Court to preserve federal uniformity under the FELA. But the court below having rejected uniformity under its "state cause of action" rationale, it has necessarily rejected the premise upon which we urge the application of the *Burnett* rule. Accordingly, no practical consequence would have flowed from the anticipatory presentation of the *Burnett* tolling rule in the lower courts, no occasion arises for a remand on that question, and the issue is ripe for this Court's adjudication.

6. In its concluding point (Brief, pp. 28-33), respondent seeks to buttress the "individual contract of employment"

thesis by which the lower court applies the Indiana limitation statute governing oral contracts. In this connection respondent cites Indiana decisions (Brief, p. 30, n. 10) holding that suits based partially upon written and partially upon verbal contracts are subject to the Indiana oral contract limitation. But there is no need for recourse to any oral contract of employment in the present case, which is based exclusively upon the written collective bargaining agreement's guarantees of vacation pay for "employees" (R. 5-7). While the individual employees are not named in the collective contract, there is no need for recourse to any oral contracts or evidence even if employment status could conceivably become an issue at the trial. Employee status may be shown by such purely written evidence as payroll, withholding tax forms, personnel records, and the like. No cited Indiana ruling has held that mere recourse to written matter subjects a suit on a written agreement to the oral contract limitation. In any event, even if recourse to individual contracts of hire *were* required to prove "employee" status, still this action would not be "based upon" individual contracts of hire rather than upon the collective contract.

Finally (see Brief for Petitioner, pp. 22-24), whatever may be the thrust of Indiana decisions, the individual contracts of employment thesis necessarily falls before the federal rule found in this Court's *Evening News* decision. There the Court rejected the viability of the "individual contract of hire" principle under Section 301 of the Labor-Management Relations Act.

Thus, respondent fails in its effort to transform a suit on a collective bargaining agreement's vacation pay provisions into a suit resting on individual contracts of hire. Instead of validating the decision below, the states rights argument merely underlines the necessity for rejection of

individualized state rules in favor of uniform national limitations periods and principles under Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

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